IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 112 OF 2005

SMT.NETRA @ MANORAMA UMAKANT SAWKAR,PONDA GOA. ....Petitioner

Versus

SHRI SHIVAJI R.P.SAWKAR AND ANR., ...Respondents

Ms. Susmita S. Bandodkar, Advocate for the petitioner.

Coram:- R. M. LODHA, J.

Date:- 13th October, 2005

P.C.

Heard learned Counsel for the petitioner. The respondents have chosen not to appear despite the service of notice.

2. The learned Counsel for the petitioner submits that as per the Order dated 2.9.2005 the cost of Rs.2500/- has been deposited by the petitioner.

3. It is true that there was some negligence on the part of the petitioner in not filing the written statement in time. However, the conduct of the petitioner (defendant) does not appear to be contumacious with an intention to protract the litigation. Though by order dated 24.1.2005 for want of written statement, the Court directed the matter to be proceeded against the defendants ex parte, on the application having been made by the defendant on 5.2.2005 setting out reasons for having not been able to file the written statement in time, the trial Court ought to have considered the said ground objectively

4. Having considered all the aspects, I am satisfied that an

opportunity deserves to be given to the petitioner to file the written statement and that the ex parte order deserves to be set aside.

5. Accordingly, the writ petition is disposed of by the following Order :

(i) The order dated 24.1.2005 is quashed and set aside.

(ii) The Order dated 5.2.2005 is quashed and set aside.

(iii) The petitioner shall file the written statement on or before 15th November, 2005.

(iv) The trial Court shall proceed with the suit accordingly.

(v) The Registrar is directed to transmit the amount of Rs.2,500/- deposited by the petitioner before this Court to the Court of Civil Judge, Junior Division, Ponda for the same being paid to the plaintiffs (respondents)

R. M. LODHA, J.

ssm.